

7 FAM 560 DRUG ENFORCEMENT ADMINISTRATION OF THE DEPARTMENT OF JUSTICE (DEA) AND THE DEPARTMENT OF STATE

(TL:CON-9; 9-15-84)

7 FAM 561 INTRODUCTION

Narcotics production and smuggling have become a significant political and health issue in the United States and abroad. Both the Department of State and the Drug Enforcement Administration (DEA) have responsibilities in deterring narcotics traffic and illegal importation or attempted importation of narcotic substances into the United States. This section of Chapter 500 summarizes how both become involved in a case, what they do, and what the role of the consular officer is.

7 FAM 562 AUTHORITY

In mid-1971 the Department of State was assigned primary responsibility for developing a coordinated U.S. Government International Narcotics Control (INC) program. In 1973 the Federal Government's Reorganization Plan No. 2 created the Drug Enforcement Administration (DEA) by merging 4 separate drug law enforcement agencies. Another major reorganization, announced by the Attorney General on January 21, 1982, gave the FBI concurrent jurisdiction with DEA over narcotics-related offenses. The Department of Justice established a high-level committee to develop and administer drug enforcement policies and to assure that other Justice Department functions are consistent with DEA/FBI priorities and policies.

7 FAM 563 DEFINITIONS

The following terms are commonly used in the narcotics control programs of the Department of State and DEA:

- a. "Amphetamine" means a colorless, volatile liquid used in its sulfate or phosphate forms as a drug to overcome mental depression or fatigue and often used by people who are dieting to lessen appetite.
- b. "Barbiturate" means any salt or ester of barbituric acid, used as a sedative, to induce sleep, or to manufacture sedatives and hypnotics.
- c. "CNA" means the Coordinator for Narcotics Affairs at an Embassy or Mission.
- d. "Control", as used in this section, means to verify and curb narcotics traffic or to direct and exercise authority over narcotics importation and commercial operations.
- e. "Controlled substance" means one over which a designated individual or organization exercises authority, to check or verify its legality, quality, or quantity and to regulate its traffic or use.
- f. "Demand reduction program" means a program designed to reduce the demand for a commodity or substance, especially for a substance obtained or disseminated illegally.

g. “Drug” means any substance used as a medicine or as an ingredient in a medicine. It may also mean a narcotic or hallucinogen (see item 563n) or any substance used to render another substance offensive or injurious.

h. “Illicit traffic” means the obtaining, manufacturing for commercial purposes, transporting, and/or trading of any substance or goods without complying with, or even actively evading, the requirements of law which regulate such activities.

i. “Importation” means the act or business of bringing in from the outside, as from another country, of goods or substances, especially for purposes of sale.

j. “Import permit” means an official, legal document or license granting permission to import goods or substances.

k. “INC” means the International Narcotics Control program established by the U.S. Government.

l. “INM” means the Bureau of International Narcotics Matters in the Department of State.

m. “Narcotic”, used as an adjective, means having the properties of a narcotic substance (see item 563n) or inducing narcosis (a state of stupor, insensibility, unconsciousness, or either arrested or excessive and erratic activity produced by the influence of a narcotic substance, sometimes accompanied by cramping of muscles or convulsions).

n. “Narcotic”, used as a noun, means a drug which in moderate doses relieves pain, lessens sensibility, and produces a profound sleep, but which, in poisonous dosage, produces stupor, coma, or convulsions, sometimes after excessive and erratic behavior.

o. “NCC” means a special interagency Narcotics Coordination Committee established at an Embassy or Mission.

p. “NPM” means a Narcotics Program Manager at an Embassy located in a country where INM has a substantial INC program.

7 FAM 564 ROLE OF THE DEPARTMENT OF STATE

7 FAM 564.1 How the Department Became Involved

Since the middle of 1971 the Department of State has been responsible for developing a coordinated U.S. Government International Narcotics Control (INC) program. The Department's authority was strengthened in August of 1971 by establishment, at the Assistant Secretary level, of the position of Senior Advisor to the Secretary and Coordinator for International Narcotics Control Matters. In October 1978, The Bureau of International Narcotics Matters (INM) was established to expand the Department's policy and management role in the narcotics control function. International Narcotics Control Program funds are used, among other things, to encourage drug control cooperation and to assist foreign governments and international organizations to improve their capacity to eradicate narcotics crops. INM also seeks to assist governments in carrying out their narcotic law enforcement responsibilities. The Bureau (INM) coordinates U.S.-funded international narcotics control training and advises on demand reduction programs.

7 FAM 564.2 Embassy Coordination

a. Abroad the Embassy or Mission Coordinator for Narcotics Affairs (CNA) acts as the principal adviser to the Chief of Mission on narcotics-related matters. The CNA coordinates the activities of all mission components in the attainment of the goals of the International Narcotics Control (INC) program.

b. The personal rank and functional location of the CNA varies according to the importance of the host country to the United States from the narcotics control standpoint and other considerations. In some countries the CNA is the Deputy Chief of Mission. In countries where there are INC projects, or where there are significant narcotics production or trafficking problems, the Ambassador or DCM chairs a special interagency Narcotics Coordination Committee (NCC), which sets Mission policy on INC issues.

c. In countries where INM has a substantial INC program, the bureau usually assigns a full-time Narcotics Program Manager (NPM). A large International Narcotics Control (INC) country program may consist of several projects directed towards providing technical assistance in the field of crop control, law enforcement, customs interdiction at points of entry and exit, agricultural and rural developments, and narcotics demand reduction.

7 FAM 564.3 Role of Consular Officers in Narcotics Control Matters

a. The post's coordinator for narcotics affairs is responsible for providing the Drug Enforcement Administration with information on foreign laws and regulations pertaining to the control of narcotic drugs, foreign governmental and academic studies on drug abuse, and local narcotics traffic and seizures. These responsibilities originally were assigned to consular officers but have been transferred to the post's coordinator for narcotics affairs.

b. The possible conflict between the role of the consular officer who must report the arrest of a U.S. citizen to the Department and the role of the consular officer who may also be the narcotics coordinator was the subject of Department Airgram 1911 of April 28, 1977 (see 7 FAM 564.3 Appendix A). Officers are encouraged to acquaint themselves with the requirements of the Privacy Act when dealing with arrest and narcotics records.

7 FAM 564.4 Arrest of U.S. Citizens for Narcotics Offenses

a. Consular officers have the responsibility to extend protective services, which include protection of citizens' civil and human rights. U.S. citizens charged with drug-related offenses abroad must be afforded the same welfare and protection services as those rendered to citizens charged with other offenses.

b. The arrest abroad of a U.S. citizen on any charge should be reported to the Department by telegram (see Chapter 7 FAM 400). If the U.S. citizen is charged with violating narcotics control laws, the consular officer should submit a report by telegram to the Department (CA/OCS/EMR) as in any other arrest case. Within the Department, the Bureau of International Narcotics Matters and CA/OCS/EMR will share appropriate information with the DEA as a routine user. In reporting an arrest of this nature to the Department, consular officers should review sections 7 FAM 564.1 and 7 FAM 564.2 .

7 FAM 565 ROLE OF THE DRUG ENFORCEMENT ADMINISTRATION (DEA)

7 FAM 565.1 History of Its Involvement

a. In July 1973, as a result of the Presidential Reorganization Plan No. 2, the Bureau of Narcotics and Dangerous Drugs (BNDD), the Office for Drug Abuse Law Enforcement, the Office of National Narcotic Intelligence, elements of the Bureau of Customs which had drug investigative responsibilities, and functions of the Office of Science and Technology that were related to drug control enforcement were merged into a newly created Drug Enforcement Administration.

b. DEA was established to control more effectively narcotics and dangerous drug abuse through reducing the supply of drugs produced or distributed illegally. Essentially, the mission of DEA is to:

1. Enforce the controlled substances laws and regulations of the United States;

2. To bring to the attention of the criminal and civil justice system of the United States or any other competent jurisdiction, any organizations and principal members of organizations involved in the growing, manufacture, or distribution of controlled substances appearing in or destined for the illicit traffic in the United States; and

3. To recommend and support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets.

7 FAM 565.2 DEA Role Abroad

DEA agents are law enforcement officers with certain investigative and other responsibilities as defined in U.S. statutes, international agreements, and bilateral agreements. They are stationed at strategic posts through out the world to assist with efforts to control the smuggling into the United States of narcotic drugs, marijuana, LSD, amphetamines, and barbiturates. When necessary, a post may communicate with the agent assigned to the country, DEA's International Office, or the Department (INM).

7 FAM 565.3 Expenditures on Behalf of DEA

Consular sections may be asked to acquire copies of publications, reports, or public documents about narcotics for DEA. Posts should account for such expenditures on DEA's behalf as required by 4 FAM 335 , as are expenditures for other purposes specifically authorized in advance by DEA through the Department, unless the authorization provides other accounting data.

7 FAM 566 PROCEDURES FOR IMPORTING NARCOTIC SUBSTANCES

a. Consular personnel should be aware that permits are issued for the importation of raw narcotic materials (such as opium and coca leaves) into the United States. The importation of manufactured narcotic drugs into the United States is prohibited except for scientific purposes establishing stability controls for medical use, analysis for verification of potency, use for animal studies, and other specialized programs.

b. The national (or host country) authority empowered to issue certificates and authorizations for the export of narcotic drugs from the exporting country is sent a copy of the U.S. import permit. The original of the import permit is sent to the exporter who uses this authorization to obtain the requisite export permit from the foreign government.

c. The original of the import permit must accompany the shipment to the United States where it must be presented to the U.S. Customs authorities upon arrival. See generally 21 CFR 1312.

7 FAM 567 PENALTY FOR ILLEGAL TRANSPORT LINE IMPORTATION

a. When a vessel arriving in the United States is found to have unmanifested narcotics aboard it, fines may be applied.

b. The owner or master of the vessel has the right to file a petition for mitigation of the fine with the Attorney General. This is to grant a master or owner equitable relief when it can be shown clearly that every precaution was exercised to prevent the boarding of narcotics intended for illegal importation into the United States.

c. In such cases a consular officer may be requested to investigate and report what precautions, if any, were taken by the master of the vessel while it was in port.

7 FAM 568 AND 569 UNASSIGNED

7 FAM 564 Appendix A 564.3b

Airgram on Narcotics Records and the Privacy Act

(Page 1 of 3)

Airgram on Narcotics Records and the Privacy Act

AIRGRAM <i>6</i> <i>1770083-1811</i> <i>A-1911</i>		HANDLING	CLASSIFICATION	MESSAGE REFERENCE NO.
			UNCLASSIFIED	A-1911
TO: Amembassy HELSINKI INFO: COPENHAGEN FOR DEA		SPECIAL SERVICES DATE: 1977 APR 23 1977 APR 28 AM 9:10 77 APR 29 AM 9 51		
FROM: Department of State E.O. 11652: N/A TAGS: AINF, OGN, SNAR, FI SUBJECT: Narcotics Records and the Privacy Act REF: Helsinki A-004, January 7, 1977		The parameters on exchanges of Department information with other agencies under the Privacy Act have no rigid boundaries, and are governed, in final analysis, by the judgment of the officer maintaining the information when he assesses the facts of the particular case, the law, and the information sought. Generally, unless the Department is required to disclose information by some other law (such as mandatory reporting under 28 U.S.C. 535 of alleged criminal violations by U.S. employees to the Justice Department), or unless the case fits into one of the other exemptions in 5 U.S.C. 552a(b), the Department can disclose personal information on its own initiative from one of its name-retrievable record systems to another agency only if that agency has been identified as a routine user of Department records or unless the information is in the public domain or is a matter of public record. In this regard, it is important for a consular officer to ascertain whether arrest records are matters of public record. If they are, particulars of arrest (i.e., name and other identifying data of person arrested, where arrested, nature of charge) may be disseminated to other agencies. Both the Justice Department and DEA are listed as routine users of consular files.		
DEPT. DISTRIBUTION ORIGIN ACTION <i>L/M</i>				
AP	ARA	CU	EA	
EB	EUR	INR	IO	
L	NEA	PER	PM	
REP	SCI	SS	SY	
AGR	AID	AIR	ARMY	
CIA	COM	DOD	DOT	
FBI	HEW	INT	LAB	
NAVY	NSA	NEC	OPIC	
STR	TAR	TRSY	USIA	
XMB				
SUGGESTED DISTRIBUTION				
DRAFTED BY: L/M:LAHumer:ad <i>leh</i>		DRAFTING DATE: 4/14/77 PHONE NO.: 20858 CONTENTS AND CLASSIFICATION REVIEWED BY: <i>Khm</i> L/M - K. E. Malmberg		
CLEARANCES: FADRC - F. Machak <i>h</i> S/NM - M. Lawrence <i>y</i>		SCS - A. Gise <i>h</i>		

Airgram on Narcotics Records and the Privacy Act — ContinuedUNCLASSIFIED

A-1911

-2-

Also, at the guidance and request of the Department of Justice, the Department has published certain routine uses that apply to all of the Department's record systems. These are found in Department's prefatory statement of routine uses. One of the "prefatory" routine uses states that "In the event that a system of records maintained by [the Department] to carry out its functions indicates a violation or potential violation of law...relevant records in the system of records may be referred, as a routine use, to the appropriate agency...charged with the responsibility of investigating or prosecuting such violation..." One of the reasons cited by the Justice Department in requesting all Federal agencies to add this routine use is that, although law enforcement agencies may make written requests for information on an individual (a (b)(7) request under the Privacy Act), the law enforcement agencies may have no idea relevant information on an individual exists in the files of another agency unless the other agency tells the law enforcement agency that it is in possession of information that seems to reasonably relate to law enforcement purposes.

If there are other facets of case that go beyond public arrest record, consular officer must use his best judgment to determine what information may be relevant to another agency. In this regard, the consular officer should keep in mind the requirement of the Privacy Act that release of information about an individual must be compatible with the purpose for which the information was collected.

"Compatibility" is not an easy standard to define. If one takes a rigid view of consular files, particularly arrest files (i.e., that they are maintained for the sole purpose of assisting the individual, the Department would find it difficult to release information from consular files to any law enforcement agency. However, a consular officer is, first and foremost, an employee of the government accountable to the public, and not a social worker ministering solely to the needs and priorities of an arrestee. "Compatible" is defined as "capable of orderly, efficient integration and operation with other elements..." and the concept of compatibility, therefore, permits a consular officer to release information about an individual to other government agencies if the information is relevant and necessary for that agency to fulfill its mission to assure that legitimate interests of the public (in this case gaining useful information about possible narcotics traffickers) are not frustrated. Justice Department guidance, obviously, takes this approach to compatibility.

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Airgram on Narcotics Records and the Privacy Act — Continued

A-1911

UNCLASSIFIED

-3-

In the end a consular officer has to rely on his own judgment, considering the facts of the particular case, in deciding whether and what to release to another agency. Thus, for example, an individual is arrested for a drug offense involving hard drugs, trafficking, or an unusual amount of drugs; it would be proper to notify DEA. DEA probably would have no need to know whether arrestee had requested an attorney, or other facts relating to the function of the consular officer assisting the arrestee. If DEA indicates it has an interest in facts which seemingly seem irrelevant, or if DEA indicates it wants access to an entire file on an individual for investigative purposes, the consular officer should request DEA to submit a written request pursuant to subsection (b) (7) of the Privacy Act.

The above guidance applies also to the files of the Narcotics Control officer to the extent his files are name retrievable. However, OMB has advised that, in certain situations, such as when personnel are cross designated to serve the functions of two or more agencies, the personnel can be considered as employees of both of their own agency and employees of the other agency for purposes of access to information. This means that information may pass from one person to another on a need-to-know basis, as if all persons were employees of the same agency. Since post narcotics coordinators or narcotics control officers work closely with DEA, their records could reasonably be considered as falling within the special situations sanctioned by OMB.

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